

1 COLEMAN & BALOGH LLP
2 ETHAN A. BALOGH, No. 172224
3 JAY A. NELSON, No. 258431
4 235 Montgomery Street, Suite 1070
5 San Francisco, CA 94104
6 Telephone: 415.391.0440
7 Facsimile: 415.373.3901
8
9
10

11 Attorneys for Defendant
12 JOHN THAT LUONG
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN THAT LUONG,

Defendant.

Case No. 96 Cr. 94 (JSW)

DECLARATION OF DONALD CRISWELL
FILED NOVEMBER 27, 2013

Before the Honorable Jeffrey S. White
United States District Judge

1 I, Donald Criswell, declare under penalty of perjury as follows:

2 1. I am a licensed investigator previously appointed under the Criminal Justice Act on
3 behalf of John That Luong in this case. Except as where otherwise expressly noted, I state the
4 following on personal knowledge, and if called as a witness could testify competently thereto.

5 2. On June 9, 1999, in connection with my investigation on behalf of Mr. Luong, I spoke
6 with Robert F. Benson, Jr., a Boston lawyer who represented Tuan Thanh Nguyen, a.k.a. Quang
7 Phan, a.k.a. Ah Muoi, in the District of Massachusetts criminal case numbered 94 Cr. 10220
8 (EFH).

9 3. Mr. Benson informed me that he knew and represented Tuan Thanh Nguyen as Quang
10 Phan.

11 4. Mr. Benson further informed me that on January 27, 1995, in case number 94 Cr.
12 10220 (EFH), the district court granted Quang Phan a judgment of acquittal at the close of the
13 Government's case in chief based on insufficient evidence to establish the essential elements of
14 the charged crime.

15 5. Mr. Benson further informed me that subsequent to his release, Quang Phan was
16 subpoenaed to testify before a federal grand jury. Mr. Benson said that he accompanied Quang
17 Phan to the proceeding, and instructed Phan to assert his Fifth Amendment right against self-
18 incrimination. According to Mr. Benson, after Phan entered the grand jury room, Mr. Benson
19 remained outside for several hours, but eventually left and never saw Quang Phan again.

20 6. I am informed and believe that trial counsel for Mr. Luong previously filed an
21 unsigned declaration under my name attesting to these same facts in connection with Mr.
22 Luong's motion to suppress evidence obtained by unlawful surveillance. See Dkt. 822,
23 Declaration of Don Criswell in Support of Defense's Response to Government's Reply
24 Memoranda. I have reviewed the prior unsigned declaration, as well as my files pertaining to

25 ///

26 ///

27 ///

28 ///

1 Mr. Luong's case—including my investigation notes and activity sheets—and recall the
2 conversation described above.

3 I state the foregoing is true and correct under penalty of perjury under the laws of the
4 United States.

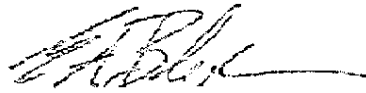
5
6 Dated: November 27, 2013


DONALD CRISWELL

PROOF OF SERVICE

I, Ethan A. Balogh, certify that on November 27, 2013, I served all parties in this matter by causing the foregoing pleading to be filed electronically, as set forth by as set forth by Local Rule 5-1. I declare the foregoing is true and correct under penalty of perjury of the laws of the United States.

Dated: November 27, 2013



ETHAN A. BALOGH